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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIFTH APPELLATE DISTRICT**

In re H. A., a Person Coming Under the Juvenile  
Court Law.

THE PEOPLE,

Plaintiff and Respondent,

v.

H. A.,

Defendant and Appellant.

F039300

(Super. Ct. No. 60101-1)

**OPINION**

**THE COURT\***

APPEAL from a judgment of the Superior Court of Fresno County. Gregory T. Fain, Judge.

Barbara Ewing Walker, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Jo Graves, Senior Assistant Attorney General, Lloyd G. Carter and Michelle L. West, Deputy Attorneys General, for Plaintiff and Respondent.

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\* Before Dibiaso, A.P.J., Harris, J., and Buckley, J.

Pursuant to a negotiated plea agreement, 16 year-old appellant H.A. admitted receiving stolen property and committing second degree burglary. (Pen. Code, §§ 496, subd. (a), 459.) The juvenile court placed H.A. in the California Youth Authority (CYA) for a maximum period of confinement of four years four months. We agree with both H.A. and the Attorney General that the sentence does not comport with the terms of the plea agreement and will modify the judgment accordingly.

### **DISCUSSION**

“Plea bargaining is an accepted practice in our criminal justice system.” (*In re Jermaine B.* (1999) 69 Cal.App.4th 634, 639.) A plea agreement is a contract between the defendant and the prosecutor adopted by the court. (*People v. Vargas* (2001) 91 Cal.App.4th 506, 533.) Penal Code section 1192.5 specifically authorizes criminal courts to accept negotiated pleas, and the same underlying principles apply to the juvenile courts. (*In re Jermaine B.*, *supra*, 69 Cal.App.4th at p. 640.)

“Upon the acceptance of a plea specifying the punishment available to the sentencing court, the court may not impose a punishment more severe than that specified in the plea bargain. [Citation.] ‘Where the plea is accepted by the prosecuting attorney in open court and is approved by the court, the defendant ... cannot be sentenced on the plea to a punishment more severe than that specified in the plea and the court may not proceed as to the plea other than as specified in the plea.’ (Pen. Code, § 1192.5.) ‘When a guilty plea is entered in exchange for specified benefits such as the dismissal of other counts or an agreed maximum punishment, both parties, including the state, must abide by the terms of the agreement. The punishment may not significantly exceed that which the parties agreed upon.’ [Citation.] It is well settled that a disposition harsher than that agreed to by the court or the prosecution may not be imposed on a defendant. [Citation].” (*Id.* at p. 639.)

The usual remedies for violating the terms of a plea bargain are either to specifically enforce the agreement or to allow the defendant to withdraw the plea and continue trial on the original charges. (*People v. Walker* (1991) 54 Cal.3d 1013, 1026-1027.) If the court can not specifically enforce the plea agreement, or a defendant makes

material misrepresentations during negotiations, the court must allow the defendant to withdraw the plea. (*In re Jermaine B.*, *supra*, 69 Cal.App.4th at pp. 639-640.)

At the adjudication hearing, defense counsel and the prosecutor announced they had reached an agreement regarding the charges to which H.A. would admit. The court then made several references limiting H.A.’s maximum period of confinement to three years four months:

“THE COURT: All right. So we would be amending Count Three to a misdemeanor, second degree burglary as a misdemeanor. [¶] The maximum period of confinement on this would be three years, four months?

“[PROSECUTOR]: Yes, Your Honor. Invoking sole wardship as well.

“THE COURT: Okay. He’s already on probation for other offenses?

“[PROSECUTOR]: Yes.

“THE COURT: [Probation], do you have the maximum period of confinement, given sole wardship? ... [¶] ... [¶] ...

“[PROBATION]: It would be eight months – three years, four months plus eight months, Judge, is that correct, four years?

“THE COURT: It looks like four years. [¶] Okay. [Defense counsel], is that your understanding of the agreement?

“[DEFENSE]: Yes, Your Honor.

“THE COURT: And, [H.A.], is that also your understanding of the agreement?

“THE MINOR: Yes, sir.

... [¶] ... [¶]

“[PROSECUTOR]: Your Honor, very quickly, in reviewing this, the People would not be invoking sole wardship in this case.”

“THE COURT: It would be three years four months MPC?

“[PROSECUTOR]: Yes.

“THE COURT: Just for two charges?

“[PROSECUTOR]: Yes.”

The juvenile court then explained H.A.’s rights and enumerated his potential dispositions, including:

“You could be placed into custody for up to three years and four months in juvenile hall or some other suitable placement up to and including the California Youth Authority[.]”

Immediately thereafter, the juvenile court accepted H.A.’s admission as to receiving stolen property and committing second degree burglary.

However, at the dispositional hearing the following month, the juvenile court adopted probation’s recommendation to commit H.A. to CYA for a maximum period of confinement of four years four months. The juvenile court did not advise H.A. he could withdraw his plea.

The Attorney General agrees H.A. bargained for a maximum period of confinement of three years four months. The record reveals the juvenile court accepted the plea arrangement, and therefore erred, when it adopted probation’s recommended disposition and imposed a greater confinement term without first allowing H.A. to withdraw his plea. Accordingly, we will modify the disposition to reflect the plea agreement.

### **DISPOSITION**

The judgment is modified to reflect a maximum period of confinement of three years four months. The juvenile court is directed to prepare an amended commitment order and forward a certified copy to the appropriate authorities. In all other respects, the judgment is affirmed.